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OFFICE OF PETITIONS

Applicant: Thakker

Appl. No.: 10/599,855

International Filing Date: April 7, 2005

Title: IMPLANT ASSEMBLY FOR PROXIMAL FEMORAL FRACTURE

Attorney Docket No.: TKKR-002

Pub. No.: 2007/0219636 A1

Pub. Date: September 20, 2007

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), received on October 3, 2007, for the above-identified application.

The request is DISMISSED.

Applicant requests that the application be republished because the patent application publication does not include the content of the application as deposited for example the publication has 26 claims, however the application as filed has 62 claims.

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹

The error noted by requestor with respect to the substitute claims and specification is not an Office error. Applicants did not follow the proper procedures and amendment format to amend the IA application when entering the national stage. See 37 CFR 1.121 and 1.125. The patent application publication does not include a mistake regarding the failure to include improperly submitted substitute claims and specification. Furthermore, patent application publications are not required to include preliminary amendments, according to 37 CFR 1.215(a).²

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239, Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

²Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan; Final Rule, 69 FR 56482 (Sept. 21, 2004).

Applicant is reminded of his duty to conduct a reasonable inquiry before filing a paper before the Office. See MPEP 410.

Applicants' request for a corrected patent application publication on October 3, 2007, may constitute a "failure to engage in reasonable efforts to conclude processing or examination of the application." See 1.704(c). This determination will be made on or after a mailing of a Notice of Allowance.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221 (a). Such a request for republication "must include a copy of the application compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18 (d) and the processing fee set forth in § 1.17 (i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18 (d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system, as a "Pre-Grant Publication" and questions or request for reconsideration of the decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
Commissioner for Patents
P.O. Box 1450
Alexandria, Va. 22313-1450

Inquiries relating to this matter may be directed to Mark O. Polutta at (571) 272-7709.



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